



THE COMMONWEALTH OF MASSACHUSETTS

EXECUTIVE DEPARTMENT

STATE HOUSE • BOSTON 02133

(617) 725-4000

DEVAL L. PATRICK
GOVERNOR

TIMOTHY P. MURRAY
LIEUTENANT GOVERNOR

ATTACHMENT D

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To the Honorable Senate and House of Representatives:

Pursuant to Article LVI, as amended by Article XC, Section 3 of the Amendments to the Constitution of the Commonwealth of Massachusetts, I am returning to you for amendment Section 30 of "An Act Making Appropriations for the Fiscal Year 2008 for the Maintenance of the Departments, Boards, Commissions, Institutions and Certain Activities of the Commonwealth, for Interest, Sinking Fund and Serial Bond Requirements and for Certain Permanent Improvements."

Section 30 of this bill is intended to make changes to Section 47 of Chapter 265 of the Massachusetts General Laws, which requires anyone convicted of a sex offense involving a child or a sexually violent offense to wear a GPS device that tracks their location within certain excluded zones. As enacted, the legislation would (1) shift the responsibility for defining the exclusion zone from the Commissioner of Probation entirely to the Court and (2) delay notice to the local police when the GPS detects that a probationer has entered an excluded zone.

With respect to shifting the responsibility for defining the exclusion zone from the Commissioner of Probation entirely to the Court, the probation officers who work daily in the region where their probationers live are best equipped to determine what zones should be excluded. Therefore, having the Probation Department

recommend exclusion zones which the Court may accept or amend allows for a meaningful determination of the geographic exclusion zone.

With respect to delaying notice to the local police when the GPS detects that a probationer has entered an excluded zone, the purpose of the GPS system is to provide instant notification to responsible parties that a probationer has entered an excluded zone. Under current law, the local police are notified immediately upon the GPS detecting that a probationer has entered an excluded zone. Under the proposed legislation, upon receiving a GPS signal that a probationer has entered an excluded zone, a probation officer would need to contact the probationer to determine why he is in the excluded zone, which would defeat the purpose of the system of ensuring that the local police have immediate notice. In the time that it would take a probation officer to undertake even a brief investigation to determine why the probationer has entered the excluded zone and then notify the local police, the probationer already could have committed one or more crimes and the purpose of the GPS system would have been defeated.

For these reasons, I recommend that Section 30 be amended by striking out the current language and inserting in place thereof the following:-

SECTION 30. Section 47 of chapter 265 of the General Laws, as so appearing, is hereby amended by striking out the second sentence and inserting in place thereof the following 2 sentences:- The probation department shall recommend geographic exclusion zones, including, but not limited to, the areas in and around the victim's residence, place of employment and school and other areas defined to minimize the probationer's contact with children, if applicable. The court shall accept or amend these recommended exclusion zones and include them as conditions of probation.

Respectfully submitted,

